IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6602 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJ DINESHBHAI JIVRAJANI

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 6602 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Rajkot city, on

21.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and served upon the petitioner reveal that the detaining authority took into consideration three offences registered against the petitioner under sec. 66B, 65(A)(E), 116B and 81 of the Bombay Prohibition Act on 31.1.2003, 28.3.2003 and again third offence dated 28.3.2003. The detaining authority took into consideration the statements recorded by the proposing authority on 19.4.2003 and verified by the detaining authority on the same day. The witnesses narrated the incidents of 19.12.2002 and 22.2.2003. These incidents are not reported to the police. The detaining authority has claimed privilege under sec. 9(2) of the PASA Act so far as the identity of the witnesses are concerned. From the above, impugned order came to be passed by the detaining authority.

Ld. advocate Ms. SG Patel for the petitioner and ld. AGP Mr. RM Chauhan for the respondents were heard at length.

Out of various contentions raised on behalf of the petitioner and controverted by the ld. AGP, this petition can be disposed of on the ground whether the subjective satisfaction of the detaining authority is vitiated on the ground that the activities of the petitioner were prejudicial to maintenance of public order. In this respect, pertinent it is to note that the offence is registered against the petitioner under the Bombay Prohibition Act, ipso facto, can hardly be said to be prejudicial to the public order and those cases are pending. When we refer to the statements of the witnesses, one witness narrates the incident of 19.12.2002. On that day, at the shop of the witness, the petitioner and his associates had been for taking snack in drunken condition. They were quarreling with each other. When the witness persuaded them to keep quite, the witness was beaten by the petitioner and his associates and they attempted to damage the shop of the witness. While in other incident, which is narrated by the witness occurred on 22.2.2003, wherein, when the petitioner was selling illegal liquor near the place of business of the petitioner, and when the witness resisted this activity, the witness was beaten. They also stated that due to fear of the petitioner, they intended to keep their identity secret. On going through this incident, it appears that the allegations taken on their face value

as they are, it is difficult to comprehend that those were the incidents involving the public order, at the most, those incidents were directed against the single individual, having no adverse effect prejudicial to the maintenance of public order disturbing even the public tempo of life, peace and tranquility of the locality. These incidents can be taken care of by the maintenance of law and order. Therefore, since, there was no material before the detaining authority as to the activity affecting adversely to the public order, the subjective satisfaction arrived at by the detaining authority vitiates and the order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 21.4.2003 by the Police Commissioner, Rajkot City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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